

BIRMINGHAM CITY COMMISSION MINUTES
SEPTEMBER 11, 2017
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Mark Nickita called the meeting to order at 7:30 p.m.

II. ROLL CALL

ROLL CALL: Present,	Mayor Nickita Mayor Pro Tem Harris Commissioner Bordman Commissioner Boutros Commissioner DeWeese Commissioner Hoff Commissioner Sherman
Absent,	None

Administration: City Manager Valentine, City Clerk Brown, Police Chief Clemence, City Attorney Currier, City Planner Ecker, Police Commander Grewe, Building Official Johnson, City Engineer O'Meara, DPS Director Wood

III. PROCLAMATIONS, CONGRATULATORY RESOLUTIONS, AWARDS, APPOINTMENTS, RESIGNATIONS AND CONFIRMATIONS, ADMINISTRATION OF OATHS, INTRODUCTION OF GUESTS AND ANNOUNCEMENTS.

Proclamations, Resolutions, Awards:

Mayor Nickita recognized Police Officer Casey Pedersen who finished fifth in the world in the Cross-Fit competition at the 2017 World Police and Fire Games in Los Angeles.

Mayor Nickita announced:

- Public input on the Birmingham Parks and Recreation Master Plan will be sought during Field Day at the Farmers Market on Sunday, September 17th from 9:00 a.m. until 2:00 p.m. and at an Open House on Tuesday, October 3rd beginning at 5:30 p.m. Visit bhamgov.org/ParksRecPlan for more information.
- Sunday, September 17th is also the Farmers Market's Harvest Festival, celebrating the bounty of Michigan's harvest, from 9:00 a.m. until 2:00 p.m. in Municipal Parking Lot #6 on N. Old Woodward.
- Baldwin Public Library's Idea Lab is now open to the public. The Idea Lab is a makerspace which includes a laser cutter and 3D printer. Visit the Library at 300 W. Merrill or go on-line to <http://www.baldwinlib.org/idealab> for additional information.
- A new Birmingham Citizens Academy session begins on September 26th. Space is still available for Birmingham residents to take part in this free 8-week program. Applications are due September 22nd. Visit www.bhamgov.org/citizensacademy to download the application.
- The Birmingham Street Art Fair is coming up on Saturday, September 16th from 10:00 a.m. until 6:00 p.m. and Sunday, September 17th from 10:00 a.m. to 5:00 p.m. For more information visit www.theguild.org.

- Next, The Principal Shopping District, The City of Birmingham and Baldwin Public Library are proud to present “Boomer Summit, for Boomers & Beyond” on Saturday, October 14th at Birmingham Seaholm High School. Leaders from around the nation will offer ideas and inspiration for making the most of the next and best years ahead. Register at www.BirminghamNext.org.

09-244-17 APPOINTMENTS TO THE BOARD OF ZONING APPEALS

Kevin Hart, Peter Lyon, and A. Randolph Judd were present and were interviewed by the Commission.

MOTION: Motion by Commissioner Bordman:
To appoint A. Randolph Judd to the Board of Zoning Appeals as a regular member to serve a three-year term expiring October 10, 2020.

VOTE: Yeas, 7
Nays, 0
Absent, 0

MOTION: Motion by Commissioner Boutros:
To appoint Kevin Hart to the Board of Zoning Appeals as a regular member to serve a three-year term expiring October 10, 2020.

VOTE: Yeas, 7
Nays, 0
Absent, 0

MOTION: Motion by Commissioner Sherman:
To appoint Peter Lyon to the Board of Zoning Appeals as a regular member to serve a three-year term expiring October 10, 2020.

VOTE: Yeas, 7
Nays, 0
Absent, 0

09-245-17 APPOINTMENT TO THE BROWNFIELD REDEVELOPMENT AUTHORITY

Mayor Nickita reported he spoke with both applicants at length over the phone, discussing their qualifications, and he is ready to make the appointment. Commissioners Hoff and DeWeese requested the applicants appear before the Commission. It was noted one applicant has lived in Birmingham for one month and the other for one year.

The City Commission took no action.

The City Clerk administered the Oath of Office to those appointed.

IV. CONSENT AGENDA

All items listed on the consent agenda are considered to be routine and will be enacted by one motion and approved by a roll call vote. There will be no separate discussion of the items unless a commissioner or citizen so requests, in which event the item will be removed from the general order of business and considered under the last item of new business.

08-246-17 APPROVAL OF CONSENT AGENDA

The following items were removed from the Consent Agenda:

- Commissioner Sherman: Item H, Set Public Hearing – Definition of Personal Services
- Commissioners Bordman and Boutros said they would abstain from voting on Item A, Approval of City Commission minutes of August 28, 2017, due to their absence from the meeting.

MOTION: Motion by Commissioner Harris, seconded by Commissioner DeWeese: To approve the Consent Agenda, with Item H removed and abstentions of Commissioners Bordman and Boutros from voting on Item A noted.

ROLL CALL VOTE:	Yeas,	Commissioner Bordman Commissioner Boutros Commissioner DeWeese Mayor Pro Tem Harris Commissioner Hoff Mayor Nickita Commissioner Sherman
	Nays,	None
	Absent,	None

- A. Approval of City Commission minutes of August 28, 2017.
- B. Approval of warrant list, including Automated Clearing House payments, of August 30, 2017 in the amount of \$3,770,596.47.
- C. Approval of warrant list, including Automated Clearing House payments, of September 6, 2017 in the amount of \$22,469,232.06.
- D. To approve a request submitted by Our Shepherd Lutheran Church requesting permission to place a Nativity scene in Shain Park from November 23, 2017 to December 29, 2017, contingent upon compliance with all permit and insurance requirements and payment of all fees, and, further, pursuant to any minor modifications that may be deemed necessary by administrative staff at the time of the event.
- E. To approve the ballots for the November 7, 2017 election as submitted and to authorize the ballots to be printed.
- F. To approve the contract for Barnum Park Field Improvements project to Homefield Turf and Athletic, Inc. in the amount of \$21,900.00 from the Capital Projects Fund, account #401-751.001-981.0100. Also, to approve the purchase of the infield material from Natural Sand Company Incorporated from the Capital Projects Fund, account #401-751.001-981.0100. Further, to authorize the Mayor and City Clerk to sign the agreement on behalf of the City.
- G. To approve the street light agreement between the City of Birmingham and DTE Energy regarding the installation of street lights at 856 N. Old Woodward Ave. Further, to direct the Mayor to sign the agreement on behalf of the City. All costs relative to this agreement will be charged to the adjacent owner.

The Commission agreed to discuss items removed from the Consent Agenda at this time.

09-247-17 SCHEDULE PUBLIC HEARING TO CONSIDER ADDING A DEFINITION FOR PERSONAL SERVICES TO THE ZONING ORDINANCE (Item H)

Commissioner Sherman said he would like to postpone setting the public hearing until after the joint meeting with the Planning Board next week.

Commissioner Hoff asked whether the definition for personal services being presented is a draft that the Planning Board did not support. City Manager Valentine confirmed and explained that the Commission is waiting on this item to receive more clarification from the Planning Board next week.

Commissioner Sherman specified that postponing Item H is a move to postpone setting a public hearing.

The Commission took no action.

V. UNFINISHED BUSINESS

None

VI. NEW BUSINESS

09-248-17	ONE YEAR PARKING REVIEW (GLENHURST, FRANK, HAYNES AND HAZEL)
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From Chief of Police Clemence's staff report to City Manager Valentine dated August 3, 2017:

The Birmingham Police Department has developed the following criteria to be used when evaluating the effectiveness and need for parking restrictions.

1. Review the number and type of complaints received in a specified area one year before and after implementation of new restrictions.
2. Have the circumstances surrounding the demand for parking changed that directly affect the area in question.
3. Resident follow-up to determine if the change has resulted in the desired outcome and if there have been any negative side effects.

Glenhurst Dr.

At their July 11, 2016 meeting the commission approved the implementation of permit parking only restrictions on Glenhurst from Lincoln to Midvale from 7:00 a.m. to 4:00 p.m. school days.

The request was submitted by resident Richard Winderstedt, who stated the area was full of parked vehicles from Seaholm students making the street congested. He cited several issues caused by the parked vehicles in the petition and obtained the required signatures.

In review of parking complaints on Glenhurst, there were 10 complaints the school year before the signs were installed, ranging from vehicles blocking driveways to parking in a manner making the road impassable. Last school year, since the signs were installed, there were four complaints, all regarding vehicles parked in a permitted area.

Staff recently spoke with Mr. Winderstedt, who stated the signs have been completely effective and have made a world of difference for residents. He was unable to think of any negative impact the signs have had and stated they have solved the problem.

Seaholm has had no changes in their parking situation and/or lot size that would affect the demand for parking in and around Seaholm High School.

Frank St.

Also at their July 11, 2016 meeting the commission approved a change in the current parking restrictions on Frank St. between Bates and Chester. Previously the restriction was two hour parking from 8:00 a.m. to 6:00 p.m. The problem, identified by Henry Velleman, was that employees of the downtown were parking in the area after 4:00 p.m. blocking any parking for residents. He stated vehicles parking in this area appeared to be afternoon shift workers of businesses in the downtown area. Mr. Velleman created a petition and obtained the required signatures.

The commission changed the parking restriction to increase the prohibited time until 10:00 p.m.

A review of parking complaints in this area showed no complaints prior to the signs being installed and two in the last year, both regarding vehicles parked for more than two hours.

Staff recently spoke with Judy Velleman who stated it has been much better since the signs were installed. She stated the area is no longer cluttered with employee vehicles and now is open for residents and their guests to use. Mrs. Velleman did state that she wished Frank St. was permit parking and expressed concerns regarding guests who visit for longer than two hours and the availability for parking their personal vehicles alongside their house during the daytime hours for more than 2 hours.

Haynes St.

At their September 12, 2016 meeting the commission approved residential permit parking on Haynes St. from S. Eton to Columbia. Previously, there were no parking restrictions in this area. The complaint presented by Jay Yaldoo was that employees and patrons of the Rail District were using the street for parking. He stated this created several issues for residents including problems accessing their driveways and available parking for guests. Mr. Yaldoo created a petition and obtained the required signatures.

Reviewing the parking complaints on Haynes showed one complaint prior to the signs being installed. After the signs were posted the police department received five complaints, all for vehicles parked without a permit.

Staff recently spoke with Mr. Yaldoo who stated it was going great and was very grateful the City took action and installed the signs. He stated family and friends visiting now have a place to park when in the past they did not. Mr. Yaldoo stated the neighbors he has talked with are all happy about the change.

There has been no change in the available parking and/or demand for parking in the Rail District.

Hazel St.

Also at their September 12, 2016 meeting the commission approved residential permit parking on Hazel St. from S. Eton to Columbia. Previously the area was "No Parking" from 7:00 a.m. to 4:00 p.m. Romain Fontanges stated after 4:00 p.m. the area was

packed with vehicles from employees and patrons of the Rail District. He cited the same concerns as Haynes St. and created a petition obtaining the required signatures.

There were no parking complaints located for Hazel St. the year before the signs were installed. Over the last year there have been 24 complaints, most for vehicles parked without a permit.

Staff spoke with Mr. Fontanges who stated the situation on the street has drastically changed with the implementation of the new signs. He stated everyone on the street he has talked to is extremely happy with the change.

Again, there has been no change in the available parking and/or the demand for parking in the Rail District.

Police Commander Grewe noted that the number of complaints increased on all four streets since the signs were installed, but the types of complaints changed. Previously the complaints regarded parking nuisances to the neighborhoods, and now the complaints are largely about vehicle adherence to the restrictions. The latter category of complaints has been decreasing as individuals get used to the restrictions.

Mayor Nickita noted the Commission may include discussing these types of traffic issues during the master plan process.

Mayor Pro Tem Harris asked whether there was an increase of any other complaints west of Eton in the Rail District.

Commander Grewe said there were not, with the exception of an issue for the residents of the condominium complexes on Villa and Yosemite. Commander Grewe explained that because the complexes have not been controlling their parking lots, non-residents have been parking in the complexes' lots and residents have been forced to park on the street. The Police Chief has told the complex managers to control their lots and expects the issue to resolve itself if they do so.

MOTION: Motion by Commissioner DeWeese, seconded by Commissioner Bordman:
To approve the continuation of the parking restrictions currently in place on Glenhurst, Frank, Haynes and Hazel St. subject to a review within two years.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

09-249-17 NORTH OLD WOODWARD / BATES STREET PARKING AND SITE DEVELOPMENT – REQUEST FOR PROPOSALS

From City Planner Ecker's staff report to City Manager Valentine dated September 6, 2017:
On March 16, 2017 the City issued a Request for Qualifications (RFQ) seeking qualified developers interested in the N. Old Woodward Parking / Bates Street Extension project.

The City received submittals from four development teams. All were reviewed by City staff and all four met the qualifications contained in the RFQ. Accordingly, the City Attorney reviewed the financial documentation to determine if all were financially qualified.

On July 26, 2017, the Ad Hoc Parking Development Committee adopted a motion finding that all four of the development teams that submitted their qualifications were in fact qualified to proceed to the next phase. The Committee directed staff to prepare a draft Request for Proposals (RFP) for their review at a future meeting.

On September 6, 2017, the Ad Hoc Parking Development Committee reviewed the draft RFP. The Ad Hoc Committee requested some changes to clarify the City's intentions, draw attention to the public plaza requirements, reference the Alleys & Passages Plan and highlight the desire for a public parking structure that can be repurposed for other uses. The Ad Hoc Parking Development Committee voted unanimously to recommend approval of the RFP to the City Commission.

Commissioner Bordman was concerned that:

- The plan did not include parking accommodations for construction site workers.
- The turn-around time between the release of the RFP and the proposal due date of January 3, 2018 is too short and may lead to rushed proposals.

City Planner Ecker explained that parking arrangements for construction site workers are generally handled during pre-construction meetings with the developer and city staff, and that all four pre-qualified candidates stated before the Ad Hoc Parking Development Committee they would only need 90 days to create and submit their proposals.

Commissioner Hoff provided a brief overview of the Ad Hoc Parking Development Committee:

- It was formed about two years ago to look at the parking situation in Birmingham.
- The Committee includes a financial representative, a developer representative, members of the advisory parking committee, members of the City Commission, and members of the Planning Board.
- Victor Saroki's firm was hired to come up with a concept plan focusing on the N. Old Woodward parking structure and the surrounding area. Based on the firm's proposal, this is a development project, not just a parking project. The proposal includes:
 - Demolishing the N. Old Woodward structure and replacing it with a larger one;
 - Developing the surrounding area with business and residential projects; and
 - Continuing Bates north to emerge on Old Woodward.
- Commissioner Hoff and Mayor Nickita are both on the Committee.
- The four pre-qualified teams have a multitude of disciplines represented.

Mayor Pro Tem Harris asked whether the sale of public land, which under the City Charter requires a public vote, needs to be incorporated in the timeline for the bidders.

City Planner Ecker confirmed that it is included under Item E – Submission Requirements and Guidelines, on page twelve. A written outline of the terms the development team proposes is required, and the terms include purchase and/or lease of land.

Commissioner DeWeese clarified that should there be a lease of public land, and not a sale, that only the Commission's approval is required. City Manager Valentine confirmed. City Planner Ecker specified that such leases have been done previously, albeit with smaller parcels.

Mayor Nickita explained that the land lease or sale would include the retail liner of the parking deck and the development parcels: one residential, one mixed use. The City would retain

ownership of the land beneath the parking deck, the street, the sidewalk, the infrastructure, the right of way, the public park or space that goes down to the river and the connection to Booth Park.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Boutros:
To direct staff to issue the Request for Proposals for the solicitation of qualified development teams to plan and construct the North Old Woodward / Bates Street Parking and Site Development with the changes noted.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

09-250-17 MAPLE ROAD RAILROAD BRIDGE IMPROVEMENTS STUDY

From DPS Director Wood’s staff report to City Manager Valentine dated August 31, 2017:

Our office has been asked to explore the feasibility and cost of making improvements to the CN Railroad Bridge crossing at E. Maple Road. Improvements to be considered include:

1. Painting the east and west facades of the bridge that are visible to the public as they travel underneath the bridge.
2. Painting the walls and ceilings of the pedestrian sidewalk areas underneath the bridge, as well as providing lighting for the sidewalk areas.
3. Painting the walls and ceilings of the roadway areas underneath the bridge.

The proposal from Walker Parking Consultants’ Restoration Consultants division is to study the feasibility and provide a cost estimate for the concrete preparation, painting and lighting of the railroad bridge. Two options are provided: 1) to review the sidewalk areas; or 2) to review the sidewalk areas and the roadway areas. Both options will include evaluating the outside facade of the bridge.

The City of Birmingham has an ongoing professional services contract with Walker Parking Consultants to assist in City parking structure maintenance and design work including electrical design aspects for all of the parking garages. This specialized task of reviewing the concrete bridge structure for purposes of painting and lighting fits perfectly in their wheelhouse.

As part of the proposal, consideration is also given to aesthetic surface improvements to the outside facades traveling eastbound and westbound. The bridge is owned and maintained by Canadian National (CN) Railroad. Costs for this initial study will vary, depending on the selected scope of work. Both options include a condition appraisal of the concrete elements of the railroad bridge, which may impact repairs or preparation work for painting. This may impact costs of the actual painting project portion of the Maple Road bridge enhancements.

It is anticipated the field survey work and study will take four to six weeks. No funds are budgeted for this consultant work or for the painting and lighting improvements. In advance of any work starting, the City will need to apply for a permit from CN Railroad for work on this property.

Mayor Nickita explained

- This is a capacity study before soliciting designs for the bridge.

- The bridge needs beautification, as it is an eastern gateway to the City.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner DeWeese: To approve Option 2, improvements at the two sidewalk areas under the bridge and at the roadway areas under the bridge, of the proposal dated August 10, 2017 for the Maple Road Railroad Bridge Improvements Study with Walker Restoration Consultants in an amount not to exceed \$8,775.00. Funds for this study will be used from Major Roads - Bridge Maintenance – Other Contractual Services account #202-449.002-811.0000.

Commissioner Hoff requested clarification about the differences between Option One and Option Two. Director Wood explained that for an additional \$1,600, an analysis of the underpass would be performed in addition to the analysis of the pedestrian walkway, which provides greater benefit in regards to the lighting and the painting needs.

Commissioner Boutros asked if the \$8,775 includes maintenance costs.

City Manager Valentine explained that this is only a feasibility study of the structure to determine:

- The best way to maintain the bridge;
- If there are any structural issues that need to be addressed;
- What type of paint will be applied and where; and
- An electrical plan for illuminating the area.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

09-251-17 BOARD OF ETHICS ADVISORY OPINION

From City Attorney Currier’s letter to City Manager Valentine dated August 31, 2017:

The City Commission referred the following question to the Birmingham Board of Ethics:
 “Is it a violation of the City of Birmingham’s Code of Ethics for a member of the Birmingham City Commission who serves on the Board of Directors of, or an advisory committee to, a community based organization that solicits or receives funding from the City when the particular seat on the board or committee is reserved for a City Commissioner and the City Commission by resolution appoints a particular Commissioner to that seat?”

The City Commission was concerned, due to the number of community boards that are asking commissioners to serve that could potentially be a conflict of interest with respect to the Birmingham Code of Ethics. The Birmingham Ethics Board rendered Advisory Opinion 2016-03 in response to their request. The City Commission can consider adopting a resolution which would basically adopt the Ethics Opinion for guidance as to whether they should serve or not serve on community boards depending upon the various competing interests.

The proposed resolution specifically adopts by reference the entire Advisory Opinion 2016-03, but identifies some of the key principles which the City Commission should follow with respect to appointments to community boards.

City Manager Valentine explained that:

- The Commission discussed this item about a month prior, as the Ethics Board completed their opinion on the question.
- As a follow-up, the Commission requested specific guidance regarding how Commissioners may serve other non-profit organizations that request Commissioners' involvement.
- This item addresses the City Attorney's suggested resolution based on the Ethics Board opinion, and whether the language provides sufficient guidance for Commissioner participation in outside agencies.

Commissioner Bordman noted:

- Points One and Two, inclusive, in the City Attorney's resolution imply that any appointment to an organization disqualifies a Commissioner from considering financial requests from an organization.
- A liaison position under the Ethics Board's advisory opinion, however, does not disqualify a Commissioner.
- It is necessary to clarify the difference in obligations between a Commissioner serving as a non-voting liaison to a Board and a Commissioner serving as a voting member of a Board when a financial request from the relevant non-profit comes before the Commission.

Commissioner Hoff explained that her understanding was that a Commissioner acting as a non-voting member or liaison cannot participate:

- In a discussion by the organization regarding any of its own financial aspects; or
- In a financial discussion by the Commission regarding a financial request from the organization.

Attorney Currier explained that if a Commissioner is a non-voting liaison to an organization's Board, the Commissioner is not precluded from voting on these issues when they come before the Commission. If a Commissioner is a voting member of a Board, however, there is a conflict.

Mayor Pro Tem Harris agreed with Commissioner Bordman's request for more specific language and requested a revision of the first clause of the sentence reading "The City wishes to exert an amount of normal control over the organization, and sitting on the Board of Directors would not be unreasonable, understanding that the Commissioner has a fiduciary responsibility to the corporation."

Commissioner DeWeese would like to see the above adjustments made and returned to the Commission.

Commissioner Hoff asked whether the Commission could simplify the issue by specifying that a Commissioner appointed to a board will only serve as a non-voting liaison.

Attorney Currier replied that the goal of the resolution is to re-state the Ethics Board's opinion, not to re-write it.

Mayor Nickita asked whether this should go back to the City Attorney, and the Commission agreed. Commissioner Sherman suggested that the ultimate outcome might follow Commissioner Hoff's suggestion that it just be the non-liaison position.

Attorney Currier said that another way of doing it is for the Commission to adopt the advisory opinion by reference in its entirety.

Commissioner DeWeese requested that it be clear that a Commissioner can be a non-voting liaison, and that a Commissioner cannot participate in any decisions regarding a non-profit Board's financial decisions if said Commissioner is serving on the Board as a voting member.

Mayor Pro Tem Harris added that if the Ethics Board's opinion is endorsed by the Commission then it is enforceable in the relevant circumstances.

The Commission took no action.

**09-252-17 STORM WATER UTILITY FEE ORDINANCE AMENDMENT SECTION
114**

From City Engineer O'Meara's staff report to City Manager Valentine dated August 29, 2017:

In 2016, pursuant to a court settlement, the City Commission authorized the implementation of a storm water utility fee, which reapportioned the charges the City needs to collect to pay for storm water disposal costs. Section 114 Article VI of the City Code was added in order to outline the terms under which the new Storm Water Utility Fee would be charged.

As a part of the ordinance, a Storm Water Utility Appeals Board was created to provide a means for the public to appeal storm water utility fees should they feel aggrieved. One appeal has been received by the City and was heard by the Board on May 16, 2017 with a follow-up meeting on May 23.

Through the discussion, staff and the Board realized an inherent problem in the wording of the ordinance with respect to single family residential properties. The charge for each class is based on the average of the runoff rates for all parcels in that class. That means that half of the parcels in any given class are generating less runoff than the average. Any single family homeowner with less than average impervious surface could potentially use the ordinance as a starting point, calculate their own runoff, and appeal to the board for a lower fee. Doing so undermines the purpose of the fee structure, which was to simplify the charging mechanism for the thousands of single family parcels in the City.

The Board summarized this conclusion by unanimously passing the following motion at their meeting of May 23, 2017:

To request staff to modify the Ordinance so that it is consistent with the apportionment method that was developed by HRC, Section 114-402 (c), same section (f) to distinguish between SFR versus non-SFR. The ordinance must recognize that the runoff potential varies on every lot but that does not mean that someone on the low end of runoff is eligible for a credit or less of an invoice than someone that is above the average. All SFR parcels within a class must be treated the same.

Per this direction, the City Attorney's office has drafted a modified ordinance to address this issue.

MOTION: Motion by Commissioner Boutros, seconded by Commissioner DeWeese:

To amend Chapter 114, utilities, Article VI, Storm Water Utility Fee, Section 114.402 – Calculation of Fees, to clarify the options for appeal on Single-Family Residential properties. *Ordinance appended to these minutes as Attachment A.*

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

09-253-17 CLOSED SESSION FOR CONSIDERATION OF THE CITY MANAGER’S PERFORMANCE EVALUATION AS REQUESTED BY THE CITY MANAGER ACCORDING TO SECTION 8(A) OF THE OPEN MEETINGS ACT.

Mayor Nickita stated there would be no action following the closed session.

VII. REMOVED FROM CONSENT AGENDA

The items removed were discussed earlier in the meeting.

VIII. COMMUNICATIONS

None.

IX. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA

None.

X. REPORTS

09-254-17 COMMISSIONER COMMENTS

Commissioner Bordman noted the Oath of Office does not include adherence to city ordinances and asked that a way be found to include in the oath process a requirement to adhere to city ordinances.

City Clerk Mynsberge explained that the City Charter specifies the language for the Oath, and changing the language itself would require a Charter amendment.

City Manager Valentine said he would return to the Commission with recommendations for how to include a requirement for observance of city ordinances with the oath.

Commissioner Hoff wanted to make note that:

1. Former Birmingham Mayor and City Commissioner Gary Kain passed away recently, and she wanted to bring his passing to the Commission’s attention.
2. She believes the Commission should spend some more time looking at residential ordinances due to some concerns expressed to her by residents.

Mayor Nickita replied that codes and zoning follow City intent which will be reviewed in the master plan process. Once the Commission has reviewed that from a planning perspective, zoning, code, and ordinance issues can be updated to reflect the intention of the master plan. The Mayor added that if there are specific concerns regarding code issues, it is a monitoring and implementation issue, not a master plan issue, which should also be considered.

City Manager Valentine agreed with Mayor Nickita and added that if there are existing code enforcement issues, they should be reported to Code Enforcement in the Building Department.

Commissioner DeWeese addressed residents and:

- Directed them to take the master plan process seriously.
- Strongly suggested that they get involved, make their views known, and add their vision to the community.
- Added that Birmingham has historically pursued its plan committedly, and that resident involvement is necessary because the plan will determine the City's actions for the next twenty to thirty years.

09-255-17 CITY STAFF REPORTS

The Commission received the Parking Utilization Report, submitted by City Engineer O'Meara. City Manager Valentine commented that valet usage is up with the Park Street structure undergoing painting, but noted even with some spaces out of service the structure only experienced two occurrences in the month of August of being full.

XII ADJOURN

Mayor Nickita adjourned the meeting into closed session at 8:50 p.m. and reconvened the regular meeting at 10:50 p.m.

The regular meeting was adjourned at 10:52 p.m.

J. Cherilynn Mynsberge, City Clerk

**CITY OF BIRMINGHAM
ORDINANCE NO. 2248**

AN ORDINANCE TO AMEND PART II OF THE CITY CODE, CHAPTER 114. UTILITIES, ARTICLE VI. STORM WATER UTILITY FEE, SECTION 114.402 – CALCULATION OF FEES

THE CITY OF BIRMINGHAM ORDAINS:

The City Code, Part II, Chapter 114. Utilities, Article VI. Storm Water Utility Fee, Section 114.402 – Calculation of Fees, shall read as follows:

Sec. 114-402. - Calculation of fees and appeals.

(a) Single-family residential ESWU. All single-family residential properties in each of the lot-size categories are assigned the same ESWU for that category. The ESWU values for the single-family residential categories are summarized in the fee schedule.

Property Type	SFR Class
Single-Family Residential, 0.125 acres or less	Class A
Single-Family Residential, 0.126 acres to 0.250 acres	Class B
Single-Family Residential, 0.251 acres to 0.500 acres	Class C
Single-Family Residential, 0.501 acres to 0.750 acres	Class D
Single-Family Residential, 0.751 acres to 1.000 acres	Class E
Single Family Residential, 1.001 acres or larger	Class F

(b) Non-single family ESWU. The storm water utility fee for non-single family lots shall equal the number of ESWU's for a given lot, multiplied by the annual rate established by the city commission per ESWU per year. The formula for determining the number of ESWU's per non-single family lot shall be calculated from the amount of pervious and impervious lot area as follows:

$$\text{Number of ESWU's} = 0.15 (TA - IA) + 0.90 (IA)$$

Average runoff potential of the standard unit/ESWU where,

TA = total area of each lot (reported in square feet);

IA = impervious area of each lot (reported in square feet).

(c) Any non-single family residential property owner liable for a storm water utility fee may appeal the determination that the property utilizes the storm water system or the amount of a storm water utility fee, including a determination on a reduction in or the elimination of the fee under subsections (a) and (b). An appeal may be based on the quantity of storm water runoff generated, the reductions established, the reductions allocated, or any other matter relating to the determination of the storm water utility fee.

- (d) A single family residential property owner may appeal the determination that the property utilizes the storm water system, however, such an appeal shall be limited to the following reasons:
1. The size of the lot has been miscalculated; or,
 2. All or part of the storm water runoff drains to an open drainage course, such as a river, lake or creek, which affects the quantity of the storm water runoff generated that gets into the storm water sewer system.
- (e) An appeal under subsection (c) shall be heard by a storm water utility appeals board appointed by the local unit of government. The appeals board shall consist of three members, two of whom shall be licensed professional engineers not employed by the local unit of government.
- (f) An appeal of a storm water utility fee shall not be brought more than one year after the fee was billed.
- (g) To prevail in an appeal of a storm water utility fee, the appellant shall demonstrate in accordance with the requirements of the plan for a non-single family residential property that the use of the system by the property is less than the amount used by the local unit of government in the calculation of that property's storm water utility fee, or for all properties the classification of the property type is in error, or there was a mathematical error in the calculation of the fee.
- (h) The sole remedy for a property owner who prevails in an appeal of a storm water utility fee is a prospective correct recalculation of the storm water utility fee.
- (i) If in an appeal of a storm water utility fee the appeals board finds that the requirements of subsection (g) have not been met, that finding is conclusive until the property is modified to either increase or decrease the utilization of the system. The property owner remains eligible for reduction or elimination of fees under the storm water utility ordinance.
- (j) A property owner making an appeal shall provide the appeals board with information necessary to make a determination.
- (k) A person aggrieved by a decision of the appeals board on an appeal under this section may appeal to the circuit court in which the property is located. An appeal to the circuit court must be filed within 30 days of the appeals board's decision.

All other Sections of Chapter 114 Utilities shall remain unaffected.
Ordained this 11th day of September 2017. Effective upon publication.

Mark Nickita, Mayor
Cherilynn Brown, City Clerk

I, Cherilynn Brown, City Clerk of the City of Birmingham, do hereby certify that the foregoing ordinance was passed by the Commission of the City of Birmingham, Michigan at a regular meeting held September 11, 2017 and that a summary was published September 24, 2017.

Cherilynn Brown, City Clerk